

DOUGLAS K. MARTIN

IBLA 83-3

Decided November 19, 1982

Appeal from decision of Arizona State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. A MC 65015 through A MC 65022.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

Where mining claims were located in March 1967 and evidence of the assessment work was not filed with the proper BLM office on or before Oct. 22, 1979, the claims are properly declared abandoned and void pursuant to 43 U.S.C. § 1744 (1976).

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

APPEARANCES: Douglas K. Martin, pro se.

## OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Douglas K. Martin appeals the August 9, 1982, decision of the Arizona State Office, Bureau of Land Management (BLM), which declared the unpatented Apache Nos. 1 through 8 lode mining claims, A MC 65015 through A MC 65022, abandoned and void because no evidence of assessment work had been filed on or before October 22, 1979, as required by 43 CFR 3833.2-1(a), for mining claims located before October 21, 1976. The claims at issue were located March 17, 1967, and were recorded with BLM September 24, 1979. The record shows the first proof of labor for the claims was filed with BLM September 23, 1980.

Appellant asserts he transmitted a copy of the proof of labor for 1979 on October 28, 1979. A copy of the 1979 proof of labor, recorded August 23, 1979, in Yavapai County, Arizona, was included with the appeal. Appellant requests the misplaced document be accepted and placed in the file of the Apache claims. He states the claims are under contract to a mining exploration company and if they are considered null and void, he will be open to legal action.

[1] Section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), requires that the owner of an unpatented mining claim located before October 21, 1976, shall file with the proper office of BLM, on or before October 22, 1979, a copy of the official record of the notice of location and evidence of assessment work performed on the claim or a notice of intention to hold the claim. Further, a proof of labor or notice of intention to hold must be filed prior to December 31 of each calendar year thereafter. The statute also provides that failure to file such instruments within the prescribed time period shall be deemed conclusively to constitute an abandonment of the mining claim. As there is no evidence that a proof of labor was filed with BLM on or before October 22, 1979, BLM properly deemed the claims to be abandoned and void. Mermaid Mining Co., 65 IBLA 172 (1982); Kivalina River Mining Association, 65 IBLA 164 (1982); Margaret E. Peterson, 55 IBLA 136 (1981). The responsibility for complying with the recordation requirements of FLPMA rests with the owner of the unpatented mining claim. This Board has no authority to excuse lack of compliance, or to extend the time for compliance, or to afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

[2] The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate without the regulations. See Northwest Citizens for Wilderness Mining Co. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Lynn Keith, *supra* at 196, 88 I.D. at 371-72.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques  
Administrative Judge

We concur:

Anne Poindexter Lewis  
Administrative Judge

C. Randall Grant, Jr.  
Administrative Judge

